IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Revision No. 477 of 2001
(Old No. 1534/1993)

Om Prakash & 3 other Vs. State

Date of decision : 4-10-04

For the approval of:-

Hon'ble Mr. Justice J. C. S. Rawat

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

Dated – 4-10-04

LSR

HIGH COURT OF UTTARANCHAL AT NAINITAL
Criminal Revision No.477 of 2001
(Old No. 1534/1993)

1. Om Prakash
2. Mahesh Chandra
3. Jang Bahadur
4. Praveen Kumar .....Revisionists

Versus

State of Uttaranchal ....Respondent

Hon'ble J. C. S. Rawat, J.

Heard Sri Vinod Sharma i/b for Sri Pramod Belwal learned counsel for the applicant and Sri Lalit Verma learned A.G.A

This revision has been preferred against the orders dated 28.5.1993 and dated 24.9.1993 passed by the Chief Judicial Magistrate, Uttarkashi in Complaint Case No.294/1991, summoning the revisionists for an offence under section 7/16 of the Food Adulteration Act and drawing proceedings under section 82-83 Cr.P.C. against the revisionists.

Brief allegations in the complaint lodged against Mahendra Prasad, Jagdish Prasad and Dwarika Dass before the Magistrate concerned was that on 2.12.1990 the sample of mustard oil was alleged to have been taken by the Food Inspector from a firm M/s Jagdish General Store, New Market, Barkaujt, District Uttarkashi. According to the prosecution, the sample was sent to the laboratory for examination and it was found that the mustard oil was adulterated. Thereafter, the necessary formalities were taken and the sanction was obtained by the Food Inspector for prosecution against Mahendra Prasad, Jagdish Prasad and Dwarika Das only. During the trial, the accused Dwarika Dass had expired on 13.1.1992 and objection was moved on behalf of the revisionists that the accused-Dwarika Dass

has died on 13.1.1992 and the proceeding was abated against the accused-Dwarika Dass. It is alleged by the accused-Mahendra Prasad and Jagdish Prasad in the complaint that the accused-Dwarika Dass was the manufacturer of the oil products and also submitted some bills with regard to the delivery of the said oil. The company has not been named in the array of the party. Learned Magistrate while disposing of the objections has held that the accused is the firm and not an individual person. The revisionists are the owners of the said firm hence they are liable for the offence committed by the firm.

The learned counsel for the revisionists has assailed the order on the ground that the accused deceased-Dwarika Dass has been made party as an individual and no company has been arrayed. Therefore, no proceedings can be launched against the revisionists and the revisionists cannot be impleaded in the said complaint in place of accused-Dwarika Dass.

Perusal of the record reveals that the revisionists are said to be the legal heirs of the deceased Dwarika Dass. The deceased- Dwarika Dass has been made a party in his individual capacity and no firm has been impleaded as a party. The sanction has not been obtained against the revisionists till date hence there was no question to proceed against them at this stage. The prosecution against the accused- Dwarika Dass is liable to be abated. It has been held in **Om Prakash Shivprakash Vs. K.I. Kuriakose SCC 1999 (8) p/633** that the court has the power to implead the manufacturer, distributor or dealer under section 20-A of the Prevention of Food Adulteration Act and this power cannot be invoked before the stage of adducing the evidence in the trial. The Hon’ble Supreme Court has

further clarified that the trial for the offences under the Act begins when the Magistrate asks the accused whether the pleads guilty or not as envisaged in section 251 of the Code. The evidence can be adduced only after recording the plea of the accused. Thus, the position is clear that power under section 20-A of the prevention of Food Adulteration Act cannot be invoked before the stage of adducing evidence in the trial, nor can it be invoked after the conclusion of the trial.

In view of the above, the Magistrate concerned has committed an error in holding that the company is the accused and the owners of the firm had to be represented through their owners.

Therefore, the revision is allowed and orders dated 28.5.1993 and 24.9.1993 are set aside.

(J.C.S. Rawat, J.)

Dated 04.10.2004